

INITIAL STATEMENT OF REASONS
California Code of Regulations
Title 9. Rehabilitative and Developmental Services
Division 1. Department of Mental Health
Chapter 14. Mental Health Services Act

California voters approved Proposition 63 during the General Election held November 2, 2004. Proposition 63 took effect on January 1, 2005 as the Mental Health Services Act (MHSA). The MHSA imposes a 1% tax on personal income in excess of \$1 million in order to increase funding to expand mental health services to children/youth, adults and older adults who have severe mental illnesses/severe mental disorders and whose service needs are not being met through other funding sources. Further, the MHSA seeks to establish prevention and early intervention programs, as well as develop innovative programs. Furthermore, the MHSA provides the opportunity for the Department of Mental Health (DMH) to increase funding for personnel and other resources to support county mental health programs and monitor progress toward statewide goals for children/youth, adults, older adults and families.

The MHSA, at Welfare and Institutions Code (WIC) Section 5847, directs the county mental health programs to develop and submit a Three-Year Program and Expenditure Plan (Plan). WIC Section 5848(c) requires DMH to establish requirements for the content of the Plan. The Plan is comprised of five broad components of activities and/or services for which the funding established under the Act can be spent. The components are: Community Services and Supports (referred to in the MHSA as Systems of Care) for children, transition-age youth, adults, and older adults; Capital Facilities and Technological Needs; Education and Training; Prevention and Early Intervention; and Innovative Programs.

Given the scale of each component, DMH is implementing each component on a sequential and/or staggered basis. The first component of the Plan to be implemented is Community Services and Supports (CSS). As DMH implements each component, it will promulgate regulations accordingly, with the ultimate goal of integrating each component into the Plan. To accomplish this, the Department is adopting Chapter 14, "Mental Health Services Act," in Division 1 of Title 9 of the California Code of Regulations (CCR).

On December 30, 2005, DMH filed emergency regulations with the Office of Administrative Law (OAL). The regulations were submitted to OAL pursuant to WIC Section 5898 which deems regulations, in 2005, necessary for the immediate preservation of the public peace, health and safety, or general welfare, and therefore, to be filed as emergency regulations and not subject to review and approval by OAL nor subject to automatic repeal until final regulations take effect. The regulations adopt Title 9, CCR, Division 1, Chapter 14, Sections 3100 through 3415 to implement, interpret, or make specific provisions pursuant to WIC 5848 et seq.

On January 13, 2006, DMH filed additional emergency regulations with OAL to amend Title 9, CCR, Division 1, Chapter 14, Section 3400 (b). The amendment was filed with OAL as emergency regulations, pursuant to Government Code Section 11346.1, and is effective through May 24, 2006.

Adoption of regulations is necessary to establish the provisions required by the MHSA. Pursuant to the Administrative Procedures Act, DMH has prepared this initial statement of reasons which presents the purpose and the rationale for necessity for each regulation.

Article 1. Application

Section 3100. Application of Chapter

Specific Purpose: Section 3100 specifies that Chapter 14 applies to the mental health services and supports provisions of the Mental Health Services Act (MHSA).

Rationale for Necessity: This is necessary to establish this chapter within Title 9 specifically for implementing the provisions of the MHSA. This chapter is devoted solely to the services and supports for which MHSA funds can be used.

Article 2. Definitions

In general, this Article defines terms that have meanings other than those covered by standard dictionary definitions. The definitions and program terms contained in this Article are used in more than one section of the regulations. If terms requiring a regulatory definition are used only in one section of the regulations, that definition is provided separately in that section.

Section 3200.000. Act

Specific Purpose: Section 3200.000 defines the term “Act” to mean the Mental Health Services Act (MHSA).

Rationale for Necessity: This definition is necessary to clearly identify that the use of the word “Act” referred to throughout the regulations is the MHSA that became effective on January 1, 2005 with the passage of Proposition 63 by California voters in November 2004.

Section 3200.010. Adult

Specific Purpose: Section 3200.010 defines an adult as a person 18 years of age through 59 years of age.

Rationale for Necessity: This definition is necessary to delineate the various subgroups within the California population that may access mental health services and programs. As written the Act requires that services be provided to Children/Youth, Transition Age Youth, Adults and/or Older Adults. It is necessary to assign an age range to these various groups; therefore, regulations must establish what constitutes an adult. This delineation allows the county to categorize information for reporting of services provided and accountability to the State on the populations served. While this definition categorically defines the eligible adult population within California, the programs/services offered under the Act are not exclusive to a specific population but are designed to meet individual needs.

Section 3200.020. Bridge Funding

Specific Purpose: Section 3200.020 defines those funds used to continue specific mental health services/programs in existence prior to approval of the county's initial Three-Year Program and Expenditure Plan.

Rationale for Necessity: This definition is necessary to clearly state which services/programs are allowed to use bridge funding and that the bridge funding is intended to allow for continuation of services/programs that may have been discontinued due to prior funding loss from a funding source other than MHSA. It also clarifies that the timeframe for use of these funds is between the time that the prior funding ended and the county's initial Three-Year Program and Expenditure Plan is approved and MHSA funds become available.

Section 3200.030. Children and Youth

Specific Purpose: Section 3200.030 defines the population of "Children and Youth" as birth through 17 years of age and individuals 18 years of age and older who meet the conditions specified in Division 7, Article 6, Chapter 26.5 of the Government Code beginning with Section 7570.

Rationale for Necessity: This definition is necessary to delineate the various subgroups within the California population that may access mental health services and programs. As written the Act requires that services be provided to Children/Youth, Transition Age Youth, Adults and/or Older Adults. It is necessary to assign an age range to these various groups; therefore, regulations must establish what constitutes a child/youth. This delineation allows the county to categorize information for reporting of services provided and accountability to the State on the populations served. While this

definition categorically defines the eligible population within California, the programs/services offered under the Act are not exclusive to a specific population but are designed to meet individual needs. Additionally, Division 7, Article 6, Chapter 26.5 of the Government Code beginning with Section 7570, in relevant part, recognizes individuals aged beyond 17 as a child/youth when an assessment determines they are “severely emotionally disturbed”. This age exception is recognized in these regulations for consistency with Government Code Section 7570 et. seq., that allows these individuals to access services that are more appropriate to children/youth rather than the population defined as an adult.

Section 3200.040. Community Program Planning

Specific Purpose: Section 3200.040 defines the “Community Program Planning” process.

Rationale for Necessity: This definition is necessary to clarify the process to be used by counties, in collaboration with stakeholders, to identify and analyze local mental health needs as well as to establish priorities and strategies to meet the identified needs. This information is used in the development of the County’s Three-Year Program and Expenditure Plan and subsequent updates to the Plan. The introduction of this term differentiates MHSA Community Program Planning from any existing stakeholder processes at the county level.

Section 3200.050. Community Services and Supports (CSS)

Specific Purpose: Section 3200.050 defines the service delivery system of “Community Services and Supports.”

Rationale for Necessity: The necessity for this definition is twofold. First, this definition is necessary to distinguish the service delivery to children and youth, transition age youth, adults and older adults with serious mental/emotional disturbance funded through MHSA from existing and previously existing System of Care programs (Adult and Older Adult Systems of Care and Children’s System of Care) funded at the federal, state and local levels. Second, this definition is necessary to identify the Community Services and Supports as one of five broad components of the Three-Year Program and Expenditure Plan, pursuant to WIC Section 5847(a).

Section 3200.060. County

Specific Purpose: Section 3200.060 defines the term “County” as used in these regulations.

Rationale for Necessity: This definition is necessary as the word “county” in regulations can refer to multiple county entities depending on the specific program governed. Chapter 14 encompasses the regulations pertinent to the MHSA. This definition, therefore, specifies that “county” is referring to the county mental health program as well as county mental health programs that act jointly and city-operated programs that were operating independent public mental health programs on January 1, 1990 as allowed in Welfare and Institutions Code 5701.5.

Section 3200.070. Department

Specific Purpose: Section 3200.070 defines “Department” as the State Department of Mental Health.

Rationale for Necessity: This definition is necessary as “department” can refer to any governmental department. The Mental Health Services Act charges the State Department of Mental Health to promulgate and administer the regulations for implementation of the requirements of the Act. As used within the Act, “department” refers to the California State Department of Mental Health.

Section 3200.080. Full Service Partnerships Service Category

Specific Purpose: Section 3200.080 provides a definition of the “Full Service Partnerships Service Category” that is one of three service categories within the Community Services and Supports component of the Three-Year Program and Expenditure Plan.

Rationale for Necessity: It is necessary to define this service category as one of three distinct service categories that exists within the Community Services and Supports component of the Three-Year Program and Expenditure Plan. In recognition that the California mental health system did not have the infrastructure to provide a full array of services and supports to everyone who is in immediate need, the Department created three service categories fundable under the CSS. The service categories were intended as approaches to service delivery and are not considered categorical. The Full Service Partnership Service Category is designed for those programs that provide the full spectrum of community services and supports to individuals and their families, when appropriate.

Section 3200.090. Full Spectrum of Community Services

Specific Purpose: Section 3200.090 defines “Full Spectrum of Community Services” as a reference to all of the services and supports necessary to assist clients and their families, when appropriate, meet his/her goals.

Rationale for Necessity: It is necessary to include this definition to make it clear that the services and supports allowed under the Full Service Partnerships Service Category (which is one of three service categories in the Community Services and Supports component of the Three-Year Program and Expenditure Plan) are not limited to services that address mental health, but also includes “non-mental health services” if these services and supports are identified in the client’s Individual Services and Supports Plan. “Non-mental health services” refer to services and supports that can indirectly improve the overall mental health of a client and family, when appropriate. One example of a “non-mental health service” is housing.

Section 3200.100. General System Development Service Category

Specific Purpose: Section 3200.100 provides a definition of the “General System Development Service Category” that is one of three service categories within the CSS component of the Three-Year Program and Expenditure Plan.

Rationale for Necessity: It is necessary to define this service category as one of three distinct service categories that exists within the CSS component of the Three-Year Program and Expenditure Plan. In recognition that the California mental health system did not have the infrastructure to provide a full array of services and supports to everyone who is in immediate need, the Department created three service categories fundable under the CSS. The Department recognized that it may not be logistically possible for all counties to provide the full spectrum of community services and supports to every individual that is in immediate need. Therefore, the General System Development Service Category was designed to allow counties to improve programs as well as services and supports that provide a narrower array of mental health services and supports specifically to address the mental illness/emotional disturbance.

Section 3200.110. Individual Services and Supports Plan

Specific Purpose: Section 3200.110 defines “Individual Services and Supports Plan” as the plan developed by the Case Manager/Personal Service Coordinator in collaboration with the client and his/her family, when appropriate, to achieve his/her goals.

Rationale for Necessity: This definition is necessary to communicate the Department’s commitment to honor the intent of the Act to move away from existing service delivery models and terminology and focus on client-centered practices. The terminology of a “treatment plan” is generally perceived and associated with the medical model where the treatment plan is developed and directed by a physician or other appropriately licensed person. The “treatment plan” directs the client’s treatment. In contrast, the Individual Services and Supports Plan (ISSP) is intended to be developed and directed in a collaborative manner between the client and his/her family, when appropriate, and a physician and/or other appropriately licensed person, and/or the

Case Manager/Personal Service Coordinator. The ISSP documents, not only treatment needs, but also the services and supports needed for the individual and family, when appropriate, to reach his/her goals.

Section 3200.120. Older Adult

Specific Purpose: Section 3200.120 defines an “older adult” as an individual 60 years of age and older.

Rationale for Necessity: The necessity for this definition is twofold. First, this definition is necessary to clarify that DMH is adopting the term “older adults” to refer to the term “seniors” used throughout the MHSA (commencing with Section 5813.5 of the Welfare and Institutions Code).

Second, this definition is necessary to delineate the various subgroups within the California population that may access mental health services and programs. As written, the Act requires that services be provided to Children/Youth, Transition Age Youth, Adults and/or Older Adults. It is necessary to assign an age range to these various groups; therefore, regulations must establish what constitutes an older adult. This delineation allows the county to categorize information for reporting of services provided and accountability to the State on the populations served. While this definition categorically defines the eligible older adult population within California, the programs/services offered under the Act are not exclusive to a specific population but are designed to meet individual needs.

Section 3200.130. Outreach and Engagement Service Category

Specific Purpose: Section 3200.130 provides a definition of the “Outreach and Engagement Service Category” that is one of three service categories within the Community Services and Supports component of the Three-Year Program and Expenditure Plan.

Rationale for Necessity: It is necessary to define this service category as one of three distinct service categories that exists within the CSS component of the Three-Year Program and Expenditure Plan. In recognition that the California mental health system did not have the infrastructure to provide a full array of services and supports to everyone who is in immediate need, the Department created three service categories under the CSS component. The Department also recognizes that, as the MHSA points out, it is necessary to reach out to unserved populations and engage people with severe mental illness/disorders in the mental health system. Therefore, the Department designed a third funding category specifically targeted for outreach and engagement. This category allows counties to develop, propose, and operate programs designed to reach out to the unserved populations in their counties.

Section 3200.140. Stakeholders

Specific Purpose: Section 3200.140 defines the group of individuals or entities having an interest in mental health services in California.

Rationale for Necessity: WIC Section 5848 requires that each Three-Year Program and Expenditure Plan and updates be developed with local stakeholders. Additionally, the stakeholders are to be involved in the review process of the Three-Year Program and Expenditure Plan and updates. The involvement of stakeholders is specifically mentioned in the Act, it is therefore necessary to acknowledge the key role that they play in the process of development of the county's Three Year Program and Expenditure Plan and updates. The definition describes the stakeholder as an individual or entity with an interest in mental health services in California. This list includes individuals with severe mental illness/disorders, their families, providers, educators, law enforcement, and any others with an interest. The example is not all inclusive as it is necessary to recognize that each county may have individualized/unique needs that will necessitate the involvement of differing individuals/groups as appropriate to address the county's specific mental health needs.

Section 3200.150. Transition Age Youth

Specific Purpose: Section 3200.150 defines "Transition Age Youth" as individuals age 16 through 25 years of age.

Rationale for Necessity: This definition is necessary to delineate the various subgroups within the California population that may access mental health services and programs. As written, the Act requires that services be provided to Children/Youth, Transition Age Youth, Adults and/or Older Adults. Because of their special needs, the MHSA distinguishes transition age youth in WIC Section 5847(c) from both the Children and Youth and Adult populations as they often have specialized needs for mental health services and supports. This delineation also allows the county to categorize information for reporting of services provided and accountability to the State on the populations served. While this definition categorically defines the eligible transition age youth population within California, the programs/services offered under the Act are not exclusive to a specific population but are designed to meet individual needs.

Section 3200.160. Unserved

Specific Purpose: Section 3200.160 defines the "Unserved" population.

Rationale for Necessity: The findings and intent of MHSA Section 2 (c) describes untreated mental illness as the leading cause of disability and suicide. Many people left untreated or with insufficient care see their mental illness worsen. For purposes of these regulations the Department has chosen to interpret "untreated" to include those

individuals that are unserved as well as underserved. It is necessary to identify this group of individuals as those with serious mental illness/emotional disorders, and their families, to include not only those that are not receiving mental health services, but also those who have had brief and/or crisis oriented contact and/or services from the County. Older adults with frequent, avoidable emergency room and hospital admissions, adults who are, or are at risk of becoming, homeless or incarcerated, transition age youth exiting the juvenile justice or child welfare systems or experiencing their first episode of major mental illness, are considered a part of this population which if served could limit the number of crisis interventions necessary and thus improve the outcomes consistent with the MHSA.

Article 3. General Requirements

Section 3310. Components of the Three-Year Program and Expenditure Plan

Section 3310 (a), (a)(1)(A), and (a)(1)(B)

Specific Purpose: This section establishes the requirement that counties submit a Three-Year Program and Expenditure Plan in order to receive MHSA funds.

Rationale for Necessity: This Section is necessary to identify the vehicle counties use to request MHSA funds. It is further necessary to clarify that not only counties and those counties acting jointly can submit a Three-Year Program and Expenditure Plan, but also city-operated programs (those cities operating programs as allowed by W&I Code Section 5701.5).

It is the Department's intent, however, to avoid duplication and potential gaps in services in counties where both city-operated programs and the county operated program exist. To this end, the Department expects that the city-operated programs and county mental health programs collaborate in creating and or expanding mental health programs that meets the county's overall identified priorities. Both the city-operated program and the county's Three-Year Program and Expenditure Plan need to demonstrate that each respective Three-Year Program and Expenditure Plan was developed in partnership.

Section 3310 (b)(1)-(b)(5)

Specific Purpose: This section establishes which components are required to be included in the Three-Year Program and Expenditure Plan.

Rationale for Necessity: This Section is necessary to provide the counties with information on the specific components, required by law, to be included in the Three-Year Program and Expenditure Plan and the various subgroups within the California population that may access mental health services that are within the CSS component. The other components, Capital Facilities and Technological Needs, Education and

Training, Prevention and Early Intervention and Innovative Programs, will be further addressed in future regulations as the Department implements each component.

Section 3310 (c)

Specific Purpose: This section establishes the time frame for Three-Year Program and Expenditure Plan updates.

Rationale for Necessity: This section is necessary in order to provide the counties with a time frame, at least annually, for updating their Three-Year Program and Expenditure Plans as required in the MHSA.

Section 3310 (d)

Specific Purpose: This section specifies that the development of the Three-Year Program and Expenditure Plan be collaborative and the process for doing so.

Rationale for Necessity: This section is necessary to ensure that the Three-Year Program and Expenditure Plan and the updates are developed in partnership with stakeholders through the Community Program Planning process consistent with the MHSA. The Community Program Planning process provides a structure and process counties can use in partnership with their stakeholders, in determining how best to utilize available MHSA funds. Requiring that stakeholders be included in the update process ensures an ongoing partnership with the stakeholders in determining how best to utilize funds available from the MHSA to meet the mental health needs of the community.

Article 4. FUNDING PROVISIONS

In general, this Article describes the requirements and parameters in order for expenditures to be eligible for reimbursement under the MHSA.

Section 3400. Allowable Costs and Expenditures

Section 3400(a)

Specific Purpose: Section 3400(a) states the specific components for which counties may use MHSA funds and establishes parameters within the components for use of the MHSA funds.

Rationale for Necessity: This Section is necessary to restate what is in the MHSA as to the specific components eligible for funding under MHSA. Counties currently receive funds, other than MHSA funds, for mental health programs/services within some of these components. MHSA provides a funding source which is to be used for new and expansion of existing mental health services/programs. In keeping with the intent of the law to expand mental health services, it is necessary to specify the allowable use of the MHSA funds while ensuring that counties continue their current commitment of funds to existing programs/services.

Section 3400 (b)

Specific Purpose: Section 3400(b) provides an introduction to three specific requirements that must be met by any program/services that is provided with MHSA funds.

Rationale for Necessity: This Section is necessary to provide the criteria that must be met by any programs and/or services that are provided with MHSA funds.

Section 3400 (b)(1)

Specific Purpose: Section 3400(b)(1) states one of the essential requirements that must be met in order to utilize MHSA funds; specifically, the services and supports must be to individuals with severe mental illness and/or severe mental disorders.

Rationale for Necessity: This Section is necessary to ensure that the use of the funds is consistent with the Findings and Declaration as stated in the MHSA which recognizes the issues that arise when mental illness/mental disorders are not treated. The passage of Proposition 63, MHSA, provides funding specifically for the treatment of individuals with severe mental illness/disorders.

Section 3400 (b)(2)

Specific Purpose: Section 3400(b)(2) states another of the essential requirements that must be met in order to utilize MHSA funds: services/programs must be designed to be voluntary in nature.

Rationale for Necessity: This Section is necessary to ensure the MHSA funds are used to establish and or expand the array of voluntary programs/services offered by the county. The voluntary or involuntary legal status of an individual with serious mental illness/disorders should not affect his/her ability to access these programs/services.

Section 3400 (b)(3)

Specific Purpose: Section 3400(b)(3) states another of the essential requirements that must be met in order to utilize MHSA funds; the funds cannot supplant existing state or county funds utilized to provide mental health services.

Rationale for Necessity: This Section is necessary to inform the county that the MHSA funds cannot be used to fund an existing program or service, unless such program or service is being expanded as specified in Section 3400(a) above. This requirement to comply with the non-supplant requirements of Section 3410 is in keeping with specific language contained in Section 5891 of the W&I Code.

Section 3400 (c)

Specific Purpose: Section 3400(c) expands on the allowable use of the MHSA funds which is to match other funding sources, but not solely for the purpose of increasing reimbursement.

Rationale for Necessity: This Section is necessary to specify that counties can use MHSA funds to maximize other funding sources such as federal reimbursements such as Medi-Cal and the Healthy Families Program, whenever possible. Funds requested under the MHSA should not be driven by the goal of maximizing Medi-Cal or Healthy Families Program reimbursement but to create new and innovative programs/services that will be effective in achieving the outcomes consistent with the MHSA.

Section 3400 (d)

Specific Purpose: Section 3400(d) makes it clear to counties that any expenditure incurred prior to the effective date of the MHSA, January 1, 2005, are not eligible for funding.

Rationale for Necessity: The voters passed the MHSA in November 2004. Section 16 of the Act states that "The provisions of the Act shall become effective January 1 of the year following passage of the Act". January 1, 2005 is the official effective date of the Act. The MHSA fund was not in existence until that date and there are no statutory retroactive funding provisions. It is necessary to reiterate to the counties that even though MHSA was passed by the voters in November 2004 the implementation date was January 1, 2005 as this proposition did not contain provisions for earlier implementation.

Section 3400(d)(1)

Specific Purpose: Section 3400(d)(1) informs the counties that for the purposes of MHSA funds, any expenditure must have prior state approval.

Rationale for Necessity: The Act creates the Mental Health Services Fund in the State Treasury and places the responsibility for the administration of the funds with the Department of Mental Health. Additionally, W&IC Code Section 5892 (g) was added to the Act stating, “All expenditures for county mental health programs shall be consistent with a currently approved plan or update pursuant to Section 5847.” This excerpt from the law lays the foundation for the use of MHSA funds. The Department, therefore, has the responsibility to review and approve individual county Three-Year Program and Expenditure Plans to insure that the funds are spent for the specific purposes outlined in the law. By requiring prior state approval for expenditures using MHSA funds, the intent of the law is met and the integrity of the Act is maintained.

Section 3405. Allowable Use of Funds in the Service Categories of the Community Services and Supports (CSS).

Section 3405(a), (a)(1), (a)(2), and (a)(3)

Specific Purpose: Section 3405(a) addresses, in regulation, the CSS component of the Three-Year Program and Expenditure Plan and the three service categories established under that component. (Note: The three service categories, Full Service Partnerships, General System Development, and Outreach and Engagement are defined in Article 2. Definitions.)

Rationale for Necessity: The MHSA provides the basic guidelines for the funding of new and expanded mental health programs. To accomplish the goals of the MHSA, the Department expanded on and made more specific the general language of the Act.

The ultimate intent of the Act is that every person with severe mental illness/disorders should receive a full array of integrated mental health services to support efforts to attain self sufficiency. The Department recognizes that this does not happen in the California mental health system due to a long history of under-funding. The Department further recognizes that some counties do not have the infrastructure or resources to provide a full array of services to everyone who is in need immediately. In order to advance the MHSA vision, the, the Department created three separate service categories which could be funded under the Community Services and Supports component of the Three-Year Program and Expenditure plan.

The Department defined the three service categories specified in this regulation to assist the counties in the development of their Three-Year Program and Expenditure plans and requests for funding. The Full Service Partnership Service Category (See Section 3200.080) is designed for those programs that counties propose provide the full

spectrum of community services and supports to individuals and their families, when appropriate.

The Department recognizes that it may not be logistically possible for all counties to provide the full spectrum of community services and supports to every individual in immediate need. Therefore, the General System Development Service Category (See Section 3200.100) was designed to allow counties to improve programs as well as services and supports that provide a narrower array of mental health services and supports specifically to address mental illness/emotional disturbance.

The Department also recognizes that, as the MHSA points out, it is necessary to reach out to unserved populations and engage people with severe mental illness/disorders in the mental health system. Therefore, the Department designed a third funding category specifically targeted for outreach and engagement, the Outreach and Engagement Service Category (See Section 3200.130).

The development of the three different service categories allows county mental health programs the flexibility necessary to develop, propose, and operate a variety of programs specifically tailored to meet the needs of their county population.

Section 3405(b), (b)(1)

Specific Purpose: Sections 3405(b), (b)(1) informs the counties that if the non-supplant requirements are met, Full Service Partnership Funds can be used to pay for the full spectrum of services to meet an individual's goals provided it is cost effective and consistent with the Individual Service and Supports Plan.

Rationale for Necessity: Under Full Service Partnership, MHSA funds may pay for the full spectrum of community services as defined in regulation Section 3200.090. The full spectrum of community services is defined in Section 3200.090 as "all services necessary to meet the client's needs including mental health and non-mental health services" for identified populations. The goal is to allow provision of a full range of needed services and supports for individual receiving services under the Full Services Partnership Category. The services are required to be cost effective and consistent with the Individual Services and Supports Plan (ISSP). The ISSP is defined in Section 3200.119).

Section 3405 (c)

Specific Purpose: Section 3405(c) introduces the conditions to be met under the General System Development Service Category and Outreach and Engagement Service Category for the use of MHSA funds. The regulation specifies that the conditions are in addition to the non-supplant requirements.

Rationale for Necessity: The MHSA specifies in W&I Code Section 5891 that the funding established shall not be used to supplant existing state or county funds utilized to provide mental health services, thus the continuous reference to Section 3410, Non-Supplant. Unlike the Full Service Partnership Service Category, which was established to provide both mental and non-mental health services and supports, the regulations establish conditions for the use of MHSA funds under the General System Development and Outreach and Engagement Service Category.

Section 3405 (c)(1)

Specific Purpose: Section 3405(c)(1) states the specific purpose of the General System Development Service Category, to provide mental health services and supports to individuals with mental illness and their families.

Rationale for Necessity: This regulation is necessary to introduce the second service category and to inform the counties that the General System Development Service Category was created to help counties improve mental health programs, services and supports for clients and families. The Full Service Partnership Service Category allows the county to provide any services, regardless of whether the service is directly related to the mental health needs of the client, consistent with the Individual Services and Supports Plan,. In contrast, the General System Development Services Category allows the county to provide services and supports for clients and families that address only the mental illness/emotional disturbance.

Section 3405 (c)(1)(A)

Specific Purpose: Section 3405(c)(1)(A) states that when counties work in collaboration with non-mental health community programs/services, only those costs directly associated with providing mental health services and supports can be paid for with General System Development funds.

Rationale for Necessity: This section is needed to provide clarification to counties concerning the use of funds under the General System Development Service Category and what portion of the services are allowed under this service category. As defined, the General System Development Service Category, funds can only be used for mental health services and supports. Any ancillary services provided to meet the needs of an individual(s) cannot be compensated under the General System Development Service Category.

Section 3405 (c)(2)

Specific Purpose: This regulation specifies that the county may only use Outreach and Engagement Service Category funds for activities to reach unserved populations.

Rationale for Necessity: This regulation is necessary in order to introduce the third service category under the Community Services and Supports component of the Three-Year Program and Expenditure Plan, Outreach and Engagement and to inform counties that these funds may only be used for activities to reach the unserved. This service category was established in recognition of the special activities needed to reach “unserved” populations, those that are currently receiving little or no services and supports. Again, as stated in the Rationale for Necessity of the Definition for “unserved” (Section 3200.160) the Department has chosen to also include individuals who may have had extremely brief and/or crisis oriented contact and/or services from the mental health system as unserved.

Section 3405(c)(2)(A)

Specific Purpose: Section 3405(c)(2)(A) provides clarification to the counties that food, clothing and shelter may be considered a support service and only an allowable cost under Outreach and Engagement when the purpose is to engage the targeted population.

Rationale for Necessity: This regulation is necessary to inform the counties of the ability to utilize MHSA funds for food, clothing and shelter when the purpose is to “engage” unserved individuals in the mental health service system. Food, clothing and shelter are not services that may be generally associated with meeting an individual’s mental health needs. However, there is a direct correlation between addressing an individual’s fundamental necessities of life and the willingness of the individual to avail themselves of the services/programs necessary to meet their mental health needs. In order to move to the next step for recovery, the fundamentals must be addressed. In simple terms, if you are homeless and worried about where you are going to sleep that night, any other issues, such as medication, peer counseling, etc. do not have a sense of urgency in one’s life.

Section 3405(c)(2)(B)

Specific Purpose: Section 3405(c)(2)(B) is necessary to limit the use of Outreach and Engagement Service Category funds solely for the purpose of providing mental health services and supports to individuals with severe mental illness and their families.

Rationale for Necessity: This regulation is necessary to inform counties that these funds can only be used for individuals with mental illness and their families. This is in keeping with the intent and purpose of the MHSA. Counties may engage in any number of outreach programs within their boundaries; for example homeless individuals. However, while the county may be offering shelter, food, etc. to these individuals, MHSA funds can only be used when the county is clearly intending to engage the individual in the mental health system.

Section 3405(c)(2)(B)(i)

Specific Purpose: Section 3405(c)(2)(B)(i) states that when counties are engaged in a collaborative effort for Outreach and Engagement, only the costs directly associated with providing mental health services and supports shall be paid under this service category.

Rationale for Necessity: This regulation mirrors regulation 3405(c)(1)(A) above in providing direction to the counties that when collaboration among other than mental health programs is undertaken, only the costs directly associated with providing mental health services and supports can be paid under the Outreach and Engagement Service Category.

Section 3410. Non-Supplant

Section 3410(a), (a)(1), (a)(2)

Specific Purpose: Sections 3410(a), (a)(1), and (a)(2) provide clarification that the MHSA funds distributed under this Chapter cannot be used for services/programs that were in existence on November 2, 2004. Subsections (1) and (2) set forth the two exceptions where the counties may use MHSA funds for services/programs that were in existence on November 2, 2004. The two exceptions are (1) the expansion of mental health services or program capacity beyond those that were provided and (2) continued funding in fiscal year 2004-05 of programs with bridge funding as defined in Section 3200.020. See Specific Purpose and Rationale for Necessity of bridge funding in Statement of Reasons Section 3200.020.

Rationale for Necessity: This regulation is necessary to establish in regulation that programs operating on November 2, 2004, for the purpose of providing mental health services are not automatically eligible for MHSA funds unless they meet one of the two specific criteria below.

The first exception is if the program in existence on November 2, 2004, will either expand the mental health services offered and/or the program capacity. In accordance with Section 5891 of the W&I Code, MHSA funds must be used to expand mental health services beyond those which were provided or funded at the time of the enactment of the MHSA, which was November 2, 2004. The Department has interpreted expansion to represent services not provided or funded in the county at the time of the enactment of the MHSA or expansion of program capacity beyond that in existence at the time the MHSA was enacted.

The counties received funding in Fiscal Year (FY) 2004-05 in order to fund specific mental health programs. Each county receives funding for provision of various mental health services each fiscal year. Some mental health programs funded in FY 2004-05 had their funding either reduced or discontinued. Subsection 3410(a)(2) allows counties

to continue with bridge funding, specific programs whose funds were impacted. Bridge Funding (as defined in Section 3200.020) is short-term funding that enabled the county to continue to provide services/programs from the date the funding for the program ended until the approval of the county's initial Three-Year Program and Expenditure Plan. Some counties continued funding (after the state funds were discontinued or reduced) the very programs that the MHSA is trying to replicate. The counties continued the funding in the hope that the MHSA would pass and there would be long-term funding available. If the Department did not allow this bridge funding, those counties that continued funding of specific programs would be unable to ever use MHSA funding for those services.

Section 3410 (b)

Specific Purpose: Section 3410(b) provides in regulation, a prohibition against using MHSA funds to supplant state or county funds required to be used for services/supports in existence in FY 2004-05.

Rationale for Necessity: The necessity for this regulation is twofold. First, it is necessary to place this prohibition in regulation even though it exists in statute to convey the Department's interpretation of the Act regarding the supplantation of MHSA funds. W&I Code Section 5891, states that MHSA funds "shall not be used to supplant existing state or county funds utilized to provide mental health services." The Department interpreted the "existing state or county funds required to be used to provide mental health services" to be those in FY 2004-05. To assist the counties estimating the aggregate amount of funds that were required to be used to provide mental health services in FY 2004-05, the Department released DMH LETTER NO: 05-08 on October 5, 2005.

DMH LETTER NO: 05-08 contains an enclosure with a listing, by county, of the FY 2004-05 allocations that were required to be used to provide mental health services. The aggregate amount becomes the base or the maintenance of effort funding that the counties are required to spend in order to comply with the non-supplant requirement at 3410(b). The maintenance of effort funding level is comprised of the Realignment Base, DMH State General Funds Allocations, PATH and SAMHSA Funding and EPSDT State General Fund Settlement. The exceptions in this regulation relate only to the Realignment Base, hence, the second necessity. The second necessity is to clarify the non-supplant rule as it relates to the Realignment funds.

Section 3410 (b)(1)

Specific Purpose: Section 3410(b)(1) provides in regulation an exception to the prohibition of using MHSA funds to supplant state or county funds required to be used for services and/or supports that were in existence in FY 2004-05. The exception is that counties may continue (as allowed by law) to reallocate 10 percent of the Realignment

funds either in or out of the mental health account. However, if a county transfers funds out of the mental health account, the county must comply with subsection 3410(a).

Rationale for Necessity: The necessity for this regulation is twofold: First, this regulation is necessary as counties cannot use MHSA funds to replace other state and county funds required to provide mental health services in FY 2004-05 (the time of enactment of MHSA). Funds required to be used by the county mental health department include all allocations either from or through the State Department of Mental Health, State General Funds, etc. and Realignment funds allocated for mental health services (excluding allowable 10 percent Realignment transfers as allowed by W&I Code Section 17600.20).

Second, this regulation is further necessary to address the non-supplant rule at 3410(b), dealing with funds spent in FY 2004-05, and its relation to the Realignment funds. It is not the Department's intent to conflict with W&I Code Section 17600.20, which allows the counties to reallocate 10 percent of Realignment funds in or out of its mental health account. The exception was incorporated in regulation in recognition that while the Realignment funds are part of the aggregate maintenance of effort the counties have to maintain, the 10 percent allowable Realignment transfer is exempt from the aggregate maintenance of effort amount. However, the Department wants to be clear that if the counties do reallocate 10 percent of the Realignment funds out of the mental health account, the county cannot then use MHSA funds to fill the void left by the reallocation and pay for services and/or programs that were in existence as specified in Section 3410(a).

Section 3410 (b)(2)

Specific Purpose: Section 3410(b)(2) provides in regulation an exception to the prohibition of using MHSA funds to supplant state or county funds required to be used for services and/or supports that were in existence in FY 2004-05. This regulation allows the county (if the county was exceeding the amount required by law) to reduce their mental health amount to the amount required to be deposited in 2004-05 pursuant to W&IC Section 17608.05 without consequences to the aggregate maintenance of effort amount. But, if the county does reduce the mental health amount to the amount to the level required in FY 2004-05, the criteria for spending of funds as specified in Section 3410(a) are applicable.

Rationale for Necessity: This regulation is necessary to provide direction to the counties regarding county matching funds in excess of requirements (overmatch) for mental health services pursuant to W&I Code Section 17608.05. Pursuant to the MHSA and reiterated in Section 3410(b) of these regulations MHSA funds shall not supplant state or county funds required to be used for services and supports that were in existence in FY 2004-05. The Department released via DMH LETTER NO: 05-08 a listing, by county, of state and county funds required to be used for mental health services in FY 2004-05. The aggregate amounts in DMH LETTER NO: 05-08 become

the base or maintenance of effort counties are required to spend in order to be in compliance with the non-supplant rule at 3410(b). The Realignment Base is one source of funding (excluding the 10 percent allowable transfer). In order for counties to receive Realignment funds, W&I Code Section 17608.05, requires that each month the counties deposit local matching funds into the mental health account. The Department recognizes that many counties exceed the amount required by law. This is generally referred to “overmatch.” Therefore, Section 3410(b)(2) exempts the funds exceeding the amount required by law in 2004-05 from the aggregate maintenance of effort the counties are required to spend in order to comply with the non-supplant regulation at 3410(b). However, the Department wants to be clear, that if the counties elects to reduce its overmatch to the level required by law in 2004-05, thereby reducing the funding for a program/services that was in existence on November 2, 2004, the requirements outlined in Section 3410(a) apply and the counties cannot use MHSA funds to fill in the void left by the reduction of overmatch.

Section 3410(c)

Specific Purpose: This regulation specifies that MHSA funds cannot be used to pay for inflationary costs associated with programs and/or services that were in existence on November 2, 2004.

Rationale for Necessity: In accordance with Section 5891 of the W&IC, MHSA funds must be used to expand mental health services beyond services that were provided or funded at the time of enactment of the MHSA, which was November 2, 2004. The Department has interpreted expansion to represent services not provided or funded at the time of enactment of the MHSA. An increase of program capacity beyond what existed at the time of enactment of the MHSA is also considered expansion and therefore can be funded under MHSA. Inflationary increases in costs associated with programs that were in existence at the time of enactment of the MHSA are not eligible for MHSA funding because they do not represent an expansion of services or increased in program capacity but rather an increase in the cost of doing business.

Section 3410 (d)

Specific Purpose: This regulation prohibits counties from loaning MHSA funds for any purpose.

Rationale for Necessity: Section 5891 of the W&I Code specifies prohibitions on the use of the MHSA funds for not only the counties but for the state as well. However, as these regulations provide direction to counties, it is necessary to delineate only those restrictions applicable to the counties. Section 5891 states that the (MHSA) funds may not be loaned to “a county general fund or any other county fund for any purpose other than those authorized by Section 5892.” Section 5892 limits the county use of MHSA funds to those programs specified in Section 3310 (b) of these regulations. A statutory

limitation on use of the MHSA funds was established and therefore, a regulation prohibiting the loaning of MHSA funds for any purpose is appropriate.

Section 3415. Non-Supplant Reporting Requirements

Section 3415 (a)

Specific Purpose: Section 3415(a) requires certification from the county mental health director that the Three Year Program and Expenditure Plan is in compliance with the requirements/exceptions to the use of the MHSA funds as specified in Section 3410, Non-Supplant.

Rationale for Necessity: This regulation establishes documentation whereby the county agrees that it will not use MHSA funds to supplant existing state or county funds. Section 3410, Non-Supplant provides the counties with an expanded explanation of this prohibition and also incorporates exceptions to the limitation. This section will ensure that the Director of the County Mental Health Department acknowledges that the Three-Year Program and Expenditure Plan developed by the county is in compliance with the non-supplant regulations. The Three-Year Program and Expenditure Plan is the mechanism used by the counties to request funds under this Act. As the Director is ultimately responsible for the Three-Year Program and Expenditure Plan and its contents, it is necessary for accountability purposes that such a certification is obtained.

Section 3415 (b)

Specific Purpose: Section 3415(b) requires that the county maintain documentation of all expenditures of MHSA funds and provide this documentation to the Department annually and more often if requested.

Rationale for Necessity: This regulation is necessary as the Department has the responsibility for overseeing the MHSA. This oversight includes ensuring that the counties are documenting how they are expending MHSA funds. This documentation provides information to the Department about how funds are spent.

Section 3415 (b)(1), (b)(2), (b)(2)(A), (b)(2)(B)

Specific Purpose: Sections 3415(b)(1), (b)(2), (b)(2)(A), and (b)(2)(B) are necessary to provide the counties with information as to what tool is used to document expenditures for presentation to the State and also who must certify on the annual cost report, compliance with the Section 3410, Non-Supplant when MHSA funds were used and that the other mental health funds allocated in FY 2004-05 were used for the purpose specified.

Rationale for Necessity: This regulation is necessary to enable the Department to monitor the county's compliance with Section 3410 of these regulations, Non-supplant, and the appropriateness of other expenditures. Certification by the County director provides accountability that the documentation is accurate and funds were spent in accordance with requirements.

Section 3415 (c), (c)(1), (c)(2)

Specific Purpose: This regulation requires that if the county used "bridge funding", documentation must be submitted to the State indicating what programs were funded, what services were provided and that these services were an identified priority in the Community Program Planning Process. Additionally, this regulation indicates what is considered "acceptable" documentation.

Rationale for Necessity: These regulations are required to ensure that those counties that utilized "bridge funding" know that documentation has to be submitted and what constitutes acceptable documentation. As stated in the Rationale for Necessity for section 3410(a)(2), bridge funding (short term funding) was used by some counties to supplement a project until the MHSA funds were available. It is, therefore, necessary for those counties utilizing "bridge funding" to demonstrate that this short-term funding was solely intended to bridge the time until the MHSA funds were available and that the services funded are clearly delineated in the MHSA. This is why it is necessary for the county to submit documentation that specifies the programs funded and the services provided. Additionally, the documentation must state that these services were identified as a priority in the Community Program Planning process. This again is in keeping with the spirit of the Mental Health Services Act to provide a structure and process that counties use, in partnership with their stakeholders, in determining how best to utilize the MHSA funds to meet unmet mental health needs within each individual county. The regulations also include examples of what constitutes "acceptable documentation" for the use of "bridge funding." The regulation provides examples so that the counties have some direction as to the type of documentation that is to be submitted when "bridge funding" is used. The regulation, however, is not all inclusive as a county may have other means of providing the required documentation.